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4 IN RE ZOOM SECURITIES LITIGATION
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Case No. 20-cv-02353-JD

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**ORDER RE LEAD PLAINTIFF AND
LEAD COUNSEL**

Re: Dkt. Nos. 28, 34, 38

This is a consolidated shareholder class action alleging securities fraud by Zoom Video Communications, Inc. (“Zoom”) and its officers. *See* Dkt. No. 24. Three motions for appointment as lead plaintiff and approval of lead counsel have been filed. Dkt. Nos. 28, 34, 38.¹

I. APPOINTMENT OF LEAD PLAINTIFF

The Court has discussed in other orders the three-step process for appointing a lead plaintiff under the Private Securities Litigation Reform Act (“PSLRA”), 15 U.S.C. § 78u-4(a)(3)(B). *See In re Stitch Fix, Inc. Securities Litigation*, 393 F. Supp. 3d. 833 (N.D. Cal. 2019). The first step is for the plaintiff in the first-filed action to “publiciz[e] the pendency of the action, the claims made and the purported class period” in “a widely circulated national business-oriented publication or wire service.” *In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002) (citing 15 U.S.C. § 78u-4(a)(3)(A)). The notice must “also state that ‘any member of the purported class may move the court to serve as lead plaintiff.’” *Id.* There is no dispute that this step was adequately completed by plaintiff Michael Drieu. *See* Dkt. No. 12 (Notice of Publication).

¹ One applicant, Lawrence Jarnes, filed a notice of non-opposition, recognizing that other applicants had a greater financial interest in the litigation. Dkt. No. 42.

1 In the next two steps, the Court considers “potential lead plaintiffs one at a time, starting
2 with the one who has the greatest financial interest, and continuing in descending order if and only
3 if the presumptive lead plaintiff is found inadequate or atypical.” *Cavanaugh*, 306 F.3d at 732. In
4 step two, the Court determines presumptive lead plaintiff status relying on the “presumptive lead
5 plaintiff’s complaint and sworn certification.” *Id.* at 730. In step three, the other plaintiffs have
6 “an opportunity to rebut the presumptive lead plaintiff’s showing” by “present[ing] evidence that
7 disputes the lead plaintiff’s prima facie showing of typicality and adequacy.” *Id.*

8 **A. The Group Investors**

9 To determine presumptive lead plaintiff status, the Court first determines which
10 prospective lead plaintiff evidences the greatest financial interest in the litigation. The self-styled
11 “Zoom Investor Group” is made up of Michael Bens, Bhadresh Shah, Kwan Sing Ng, and Tony D.
12 Pham, and the group claims an aggregate loss of approximately \$708,760. Dkt. No. 39 Exh. A.
13 While the PSLRA expressly contemplates that certain groups of persons may collectively serve as
14 lead plaintiff, 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I), “the clear consensus in our district is that a group
15 of investors who had no pre-existing relationship with one another, and whose relationship and
16 group status were forged only by a lawyer, is not appropriate to be lead plaintiff based on their
17 aggregated losses.” *Stitch Fix*, 393 F. Supp. 3d at 835. The members of the Zoom Investor Group
18 do not claim to have any pre-existing relationship. *See* Dkt. No. 39 Exh. D (Joint Declaration);
19 *see also* Dkt. No. 44 Exh. 1 (Further Joint Declaration). Consequently, the Court will not consider
20 this aggregate loss in determining the presumptive lead plaintiff.

21 **B. The Individual Investors**

22 The Zoom Investor Group urges that it should still be considered the presumptive lead
23 plaintiff based on the total loss claimed by one of its members, Dr. Tony Pham. Dkt. No. 43 at 5.
24 In the alternative, the Zoom Investor Group urges the appointment of Pham as sole lead plaintiff,
25 *id.* at 8, and has submitted a second joint declaration stating that each member of the group is
26 willing to serve as sole lead plaintiff, Dkt. No. 44 Exh. 1 ¶ 8. A competing candidate, Adam Butt,
27 contends that Pham is not an adequate plaintiff because he is subject to unique defenses due to the
28 timing of his stock sales. Dkt. No. 46 at 8-10; Dkt. No. 47 at 6-7.

1 The Court “must calculate each potential lead plaintiff’s financial interest in the litigation”
2 using a method that is “both rational and consistently applied.” *Cavanaugh*, 306 F.3d at 730 n.4.
3 Both individuals present their total losses as proxies for their financial stakes. Dkt. No. 29 Exh. C
4 (Butt’s total loss was \$209,517.12); Dkt. No. 39 Exh. A (Pham’s total loss was \$327,300). But
5 there is reason to believe that Pham’s total loss overstates his financial interest in the relief sought
6 by the class. Pham sold his Zoom stock on December 30, 2019, for \$66.99 per share, Dkt. No. 39
7 Exh. A, far lower than the share price after the alleged partial corrective disclosures over 90 days
8 prior, Dkt. No. 1 ¶ 36 (Zoom’s stock price closed at \$90.76 per share on July 8, 2019); *id.* ¶ 38
9 (Zoom’s stock price closed at \$91.40 per share on July 11, 2019). Because Pham sold his shares
10 over 90 days after the prior alleged corrective disclosure, in which time the stock price fell by
11 around \$24 per share, Pham’s losses are likely greater than the PSLRA’s statutory damages cap.
12 *See* 15 U.S.C. § 78u-4(e). While it is too early in the litigation to estimate with any precision the
13 amount of damages any plaintiff might ultimately recover, the amount of the damages cap can be
14 rationally and consistently determined for each potential lead plaintiff by reference to the statute
15 and historical stock price data. Consequently, the Court will not consider losses that exceed the
16 statutory damages cap, as such losses are not relevant in determining which plaintiff “has the most
17 to gain from the lawsuit.” *Cavanaugh*, 306 F.3d at 730. Instead, the Court will compare the
18 potential lead plaintiffs’ financial interests in the relief sought by the class by calculating the
19 amounts of their total losses that are recoverable under the PSLRA.

20 The method of calculating the PSLRA’s statutory damages cap depends on whether a
21 plaintiff sold his or her shares more than 90 days after a corrective disclosure alleged in the
22 complaint. For plaintiffs who sell their stock outside of 90 days from the relevant corrective
23 disclosure, damages awards are limited to the difference between the purchase price and the mean
24 trading price of the stock during that 90-day period. 15 U.S.C. § 78u-4(e)(1). For plaintiffs who
25 sell their stock within that 90-day period, damages awards are limited to the difference between
26 the purchase price and the mean trading price of the stock between the date of the disclosure and
27 the date the stock was sold. *Id.* § 78u-4(e)(2).

1 Pham sold his stock more than 90 days after the preceding corrective disclosures alleged in
2 the complaint. Dkt. No. 1 ¶¶ 35-38 (alleging partial corrective disclosures between July 8 and 11,
3 2019); Dkt. No. 39 Exh. A at 1 (Pham sold his shares on December 30, 2019). The total purchase
4 price for Pham's 10,000 shares of Zoom stock was \$997,200. Dkt. No. 39 Exh. A. Historical
5 stock price data show that the mean trading price for Zoom stock in the 90-day period starting July
6 11, 2019, was \$88.48 per share.² The product of this mean trading price and Pham's 10,000
7 shares is \$884,800. Therefore, under Section 78u-4(e)(2), Pham can recover no more than
8 \$112,400 of his total loss (\$997,200 less \$884,800).

9 Butt sold his stock less than 90 days after the March and April 2020 disclosures. *See* Dkt.
10 No. 1 ¶¶ 49-66 (alleging corrective disclosures between March 26 and April 6, 2020); Dkt. No. 29
11 Exh. C (Butt sold his shares on April 8, 2020). The total purchase price for Butt's 6,261 shares
12 was \$979,624.48. Dkt. No. 29 Exh. C. The mean trading price for Zoom stock between April 6
13 and 8, 2020, was \$118.17 per share.³ The product of this mean trading price and Butt's 6,261
14 shares is \$739,862.37. Therefore, under Section 78u-4(e)(2), the applicable statutory damages cap
15 is \$239,762.11 (\$979,624.48 less \$739,862.37), which is greater than Butt's total loss of
16 \$209,517.12. Dkt. No. 29 Exh. C.

17 **C. Adam Butt**

18 The amount of Butt's total loss, \$209,517.12 -- which is less than his statutory damages
19 cap under Section 78u-4(e)(2) -- exceeds \$112,400, the portion of Pham's loss that is recoverable
20 under Section 78u-4(e)(1). Butt "has the most to gain from the lawsuit." *Cavanaugh*, 306 F.3d at
21 730. Because Butt has provided information satisfying Rule 23(a)'s typicality and adequacy
22 requirements, Dkt. Nos. 28 at 4-5; Dkt. No. 29 Exhs. B-D, he is the presumptively most adequate
23 plaintiff. *Cavanaugh*, 306 F.3d at 730. Despite the Zoom Investor Group's ill-advised attempt to
24 reserve the right to address Butt's typicality and adequacy in their opposition, Dkt. No. 43 at 9,
25 they did not do so in their reply, *see* Dkt. No. 49, and have forfeited the opportunity to dispute his
26 showing of typicality and adequacy. The Court appoints Adam Butt as lead plaintiff of the

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28 ² See <https://finance.yahoo.com/quote/ZM/history?period1=1562803200&period2=1570665600>.
³ See <https://finance.yahoo.com/quote/ZM/history?period1=1586131200&period2=1586390400>.

1 consolidated action.

2 **II. APPOINTMENT OF LEAD COUNSEL**

3 Under the PSLRA, the Court must also appoint lead counsel. *Stitch Fix*, 393 F. Supp. 3d at
4 836-37; 15 U.S.C. § 78u-4(a)(3)(B)(v) (“The most adequate plaintiff shall, subject to the approval
5 of the court, select and retain counsel to represent the class.”). “While the appointment of counsel
6 is made subject to the approval of the court, the Reform Act clearly leaves the choice of class
7 counsel in the hands of the lead plaintiff.” *Cavanaugh*, 306 F.3d at 734 (citations omitted). Butt
8 has selected the firm of Robbins Geller Rudman & Dowd LLP. Dkt. No. 28 at 1, 5-6. The Court
9 sees no reason to disagree with his selection. Robbins Geller Rudman & Dowd LLP is appointed
10 lead counsel for the putative class in this consolidated action.

11 **III. CASE SCHEDULE AND NEXT STEPS**

12 The parties are directed to meet and confer to set a schedule for the lead plaintiff’s filing of
13 a consolidated complaint and the defendants’ response to the complaint. A joint proposed
14 schedule is due by November 16, 2020.

15 Pursuant to the PSLRA and the Federal Rules of Civil Procedure -- as well as for the sake
16 of clarity and efficient case management -- lead plaintiff is directed to set out in chart form his
17 securities fraud allegations under the following headings on a numbered, statement-by-statement
18 basis: (1) the speaker(s), date(s) and medium; (2) the false and misleading statements; (3) the
19 reasons why the statements were false and misleading when made; and (4) the facts giving rise to
20 a strong inference of scienter. The chart may be attached to or contained in the consolidated
21 complaint, and will be deemed to be a part of the complaint. If lead plaintiff decides to rest on the
22 original complaint, the chart is due by the deadline to file the consolidated complaint.

23 **IT IS SO ORDERED.**

24 Dated: November 4, 2020



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JAMES DONATO
United States District Judge